

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Charlottesville Division - In Admiralty

ATLANTIC SPECIALTY  
INSURANCE COMPANY

Plaintiff

v.

BOGDAN ANDREI BINDEA

Defendant

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Civil Action No.: 3:21-cv-00002

**RESPONSE OF THIRD PARTY DEFENDANTS, ASAP INSURANCE AGENCY, LLC  
AND JOHN UHR, TO THIRD PARTY PLAINTIFF'S  
MOTION TO COMPEL OR, IN THE ALTERNATIVE, FOR SANCTIONS**

COME NOW the Third Party Defendants, ASAP Insurance Agency, LLC and John Uhr, by counsel, and file the within Response and Opposition to Third Party Defendant's Motion to Compel Third Party Defendant, John Uhr, to Comply with Deposition Notice and Alternative Request for Merits Sanctions, and as grounds therefor state as follows:

1. At the outset, it should be noted that the undersigned counsel initially entered an appearance on behalf of Third Party Defendant, ASAP Insurance Agency, LLC through the filing of an Answer to the Third Party Complaint on May 11, 2021.

2. Over the ensuing months, counsel learned that Third Party Defendant, John Uhr, had been served with process. Because of the business relationship between Peter Malinsky, the owner of ASAP Insurance Agency, and Mr. Uhr, Mr. Malinsky requested counsel to enter an appearance on behalf of Mr. Uhr.

3. Accordingly, an Answer to the Third Party Complaint was filed on behalf of Mr. Uhr on June 23, 2021.

4. During the months of June, July, and August 2021, counsel had fairly regular contact with Mr. Uhr both by telephone and through the exchange of email correspondence.

5. Mr. Uhr, along with Mr. Malinsky, provided the information included in the Initial Disclosures that were filed on October 7, 2021, and also provided information and written materials that were produced in discovery on behalf of ASAP Insurance Agency, LLC on October 5, 2021.

6. Following the exchange of written discovery, counsel then conferred with the other attorneys in the case, and after a series of telephone calls and email exchanges, it was agreed that the depositions of Mr. Bindea, Mr. Malinsky, and Mr. Uhr would take place on January 20, 2021.

7. During the week prior to January 20, 2021, counsel spoke by telephone with Mr. Uhr and Mr. Malinsky in order to review the case, and prepare for the depositions.

8. On January 18, 2022, at 5:49 p.m., Michael Vincenzo (counsel for Bogdan Bindea) sent an email to all counsel of record notifying counsel that Mr. Bindea was too ill to attend the deposition on January 20, 2022.

9. Following receipt of the January 18, 2022 email from Mr. Vincenzo, a long series of emails were exchanged by and between counsel on January 19, 2022 in order to select an agreed date for the rescheduling of all three depositions, and it was ultimately agreed that the depositions would be rescheduled for March 16 or March 17, 2022.

10. Accordingly, on January 19, 2022, counsel sent an email to Mr. Uhr and Mr. Malinsky notifying them of the plan to reschedule their respective depositions on March 16, 2022 or March 17, 2022.

11. Mr. Uhr promptly responded to counsel by sending a reply email which read: “Jeffrey, I’m good. Let me know. John Uhr” (Please see the exchange of emails appended hereto as Exhibit 1).

12. The email from Mr. Uhr on January 19, 2022 is the last time counsel has had any form of contact with him.

13. Since that time, counsel has diligently attempted to regain contact with Mr. Uhr, and has spent significant funds in an attempt to determine Mr. Uhr’s current home and business address.

14. Based on information provided by two different private investigators, counsel was led to believe that Mr. Uhr was residing at an apartment complex in Hammond, Louisiana. Accordingly, with the consent of all counsel, the undersigned counsel noted the deposition of Mr. Uhr for July 28, 2022 to be taken in the law office of King & Jurgens in New Orleans, Louisiana. (Please see the Deposition Notice appended hereto as Exhibit 2).

15. Counsel then hired a private investigator by the name of Ron Frazier to serve Mr. Uhr with a Subpoena for the July 28, 2022 deposition, but was subsequently informed by Mr. Frazier that Mr. Uhr had recently moved out of the apartment in Hammond, Louisiana, and had most likely returned to a location in New Jersey. (Please see the email exchange appended hereto as Exhibit 3).

16. Counsel then hired a process service company in New Jersey by the name of Callahan Lawyers Service, and provided Callahan with three or four addresses where Mr. Uhr had previously worked and/or resided.

17. Per the Affidavit of Attempted Service and Diligent Inquiry appended hereto as Exhibit 4, Callahan made ten (10) different attempts to locate and serve Mr. Uhr for a deposition to be held on August 25, 2022 at the law office of Zarwin Baum in Jersey City, New Jersey. (Please see the Affidavit appended hereto as Exhibit 4 and the Amended Deposition Notice appended hereto as Exhibit 5).

18. Counsel has made numerous attempts to locate and communicate with Mr. Uhr, and will likely have to file a Motion to Withdrawal as his counsel if he cannot be located.

19. Before such a drastic step is taken, counsel would respectfully request that the Court issue an Order compelling Mr. Uhr to appear for a deposition on or before a certain date, and if he should fail to appear for deposition on the date selected by counsel, the undersigned counsel will have no alternative but to withdraw his appearance as counsel for Mr. Uhr.

20. Because Mr. Uhr was acting as an independent contractor on behalf of ASAP Insurance Agency when the insurance policy at issue in this case was sold to Mr. Bindea, any sanction that may ultimately be ordered by the Court as against Mr. Uhr should have no impact on ASAP Insurance Agency.

21. Stated differently, although this Court may ultimately accept as true some or all of the allegations in the Third Party Complaint as against Mr. Uhr, those allegations are not admitted by ASAP Insurance Agency as ASAP has a number of different meritorious defenses to the Third Party Complaint.

WHEREFORE, the premises considered, Defendants ASAP Insurance Agency, LLC and John Uhr, by counsel, respectfully request that this Honorable Court issue an Order compelling Mr. Uhr to appear for a deposition prior to awarding any merit sanctions against Mr. Uhr, and

should Mr. Uhr fail to appear for a properly noted deposition by the date imposed by the Court, counsel will be forced to withdrawal his appearance on behalf of Mr. Uhr.

Respectfully submitted,

JOHN UHR  
ASAP INSURANCE AGENCY, LLC

By counsel:

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*Counsel for John Uhr and ASAP Insurance Company*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 26th day of August, 2022, I efiled a copy of the foregoing Response of Third Party Defendant, John Uhr, to Third Party Plaintiff's Motion to Compel or, in the Alternative, for Sanctions to:

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